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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/653,267 08/31/00 EINI

M 00/20309

EXAMINER

HM12/0914

G E EHRlich (1995) LTD
C/O ANTHONY CASTORINA
SUITE 207
2001 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

HIGHWAY DATION M

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

09/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/653,267

Applicant(s)

EINI ET AL.

Examiner

Mina Haghighatian

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-103 is/are pending in the application.
- 4a) Of the above claim(s) 6,13-25,31,42 and 52-103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 26-30, 32-41, 43-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 6,13-25,31,42 and 52-103 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Claims 13-25 and 53-103 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

Further, claims 6, 31, 42 and 52 are withdrawn from consideration as being directed to nonelected species.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7-12, 26-30, 32-41 and 43-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter et al (6,224,888).

Vatter teaches cosmetic compositions comprising from about 0 to 90% by weight of a solidifying agent, from about 0 to 90% by weight of an emollient component, from

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about 0 to 40% by weight of a polar solvent and from about 0.01 to about 50% by weight of vitamin B3 compound, thus meeting instant claims 1, 26 and 37 (see abstract). The emollients of Vatter meet the hydrophobic solvent of the instant claims.

The suitable solvents include flavor oils such as peppermint oil, orange oil and citrus oil. Oils act as emollients and also impart viscosity, tackiness, and drag properties to cosmetic compositions such as lipstick. Examples of suitable oils include hydrogenated vegetable oils, castor oil, palm kernel oil, rapeseed oil, safflower oil, jojoba oil, avocado oil, evening primrose oil, etc, thus meeting claims 4-5, 29-30, 40-41 (col. 5, lines 1-19; col. 6, lines 18-55; col. 12, lines 50-61).

Vatter describes the solidifying agents as being effective in solidifying the particular liquid base materials to be used in cosmetic compositions. The term "solidify" refers to physical and/or chemical alteration of the liquid base material so as to form a solid or semi-solid at ambient conditions, thus rendering instant claim 3 obvious. The solidifying agent is preferably present at a concentration of from about 0 to about 90%, more preferably from about 5 to about 40%. Suitable wax-like solidifying agents include fatty acids, fatty alcohols, fatty acid esters having fatty chains of from about 8 to about 30 carbon atoms. In the gel sticks the suitable solidifying agents are sodium and potassium salts of higher fatty acids, sodium stearate, sodium palmitate, aluminium stearate, etc, thus meeting instant claims 2, 3, 7-12, 27, 28, 32-36, 38, 39 and 43-48 (col. 8, line 11 through col. 10, line 19).

Vatter also teaches that the solidifying agent in combination with the emollient is believed to act as an occlusive on the skin by forming continuous or discontinuous bi-layer or multi-layer films on the skin (col. 10, lines 47-55).

Vatter discloses some optional ingredients suitable for the composition such as anti-inflammatory agents such as hydrocortisone, and other skin active agents such as vitamin D, retinoic acid, zinc oxide etc (col. 12, lines 19-49).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of Vatter by selecting suitable oil emollients and amounts as disclosed, because of the expectations of successfully producing a cosmetic carrier suitable for vitamin B3, further, one would have been motivated to select emollient oils from renewable sources, such as the disclosed vegetable oils for environmental and marketing reasons.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter et al as applied to claims 1-5, 7-12, 26-30, 32-41 and 43-50 above, and further in view of Geria (4,992,478).

Vatter is discussed above. Vatter lacks specific teachings on psoriasis.

Geria teaches anti-inflammatory skin moisturizing composition, comprising an oil phase, an aqueous phase and an effective amount of a topical medicament. The medicament useful in the present invention may be selected from a wide range of compounds such as antiinflammatories, antibiotics, antifungals and compounds for the treatment of psoriasis, dermatitis etc, (col. 7, lines 32-68).

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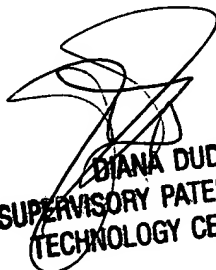
It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of Vatter by adding the medicaments ^{to treat} the disorders as taught by Geria, with the reasonable expectations of broadening the range of functions for the ^{topical} base composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 703-308-6330. The examiner can normally be reached on MON-FRI from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

Mina Haghighatian
Patent Examiner
September 7, 2001


DIANA DUDASH
SUPERVISORY PATENT EXAMINER
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